

THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204

STATE OF INDIANA)
)
COUNTY OF MARION)

GOLDIE M. KENT,
Complainant,

DOCKET NO. 07184

vs.

KAISER ALUMINUM AND CHEMICAL
CORPORATION,
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing was held before the Indiana Civil Rights Commission ("ICRC") on March 18, 1982. Commissioners present were the Chairman, Mr. James A. Lang; Mr. Everett J. Coleman; Ms. Mary W. Shafer; and Mr. David L. Staples; Commissioners absent were the Vice-Chairperson, Dr. Nedra S. Kinerk; Dr. C.T. Boyd, and Mr. John Carvey.

Complainant Goldie M. Kent ("Kent") was present and was represented by counsel, Ms. Janet M. Coney. Prior to Kent presenting her case, her Motion for Summary Judgment was denied.

Representatives from Respondent Kaiser Aluminum and Chemical Corporation ("Kaiser") arrived as Kent was closing her case. Those were its attorney, Mr. Robert J. Allen, Jr., Chief Labor Counsel, whose offices are in Oakland, California and Mr. James P. McMahon, Personnel Superintendent at Kaiser's plant in Wanatah, Indiana.

As a sanction for failure to answer Kent's Interrogatories, Kaiser was precluded from calling witnesses with the exception of being allowed to recall Kent, who had previously testified. Kent was the only witness who testified, being called by both parties.

At the close of the hearing the parties were ordered to submit proposed decisions within forty-five (45) days. Kent's proposed decision was filed on May 3, 1982. Kaiser's proposed decision was mailed on May 4, 1982 and received and filed on May 5, 1982.

Having considered the evidence, the arguments of counsel, and the proposed decisions submitted by the parties, and being duly advised in the premises, ICRC hereby enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Goldie M. Kent ("Kent"), the Complainant in this case, is a Negro (hereinafter "Black") citizen of the State of Indiana.
2. Kaiser Aluminum and Chemical Corporation ("Kaiser"), the Respondent in this case, is a corporation doing business in Indiana, its basic business being the manufacture of aluminum. Among its Indiana facilities is one located in Wanatah, Indiana ("the Wanatah plant"), out of which the instant case arose. The Wanatah plant has employed, at all relevant times, six (6) or more persons for wages or salary.
3. Kent was hired by Kaiser as a stamper-packer at the Wanatah plant on May 5, 1975. She began working in this position on May 7, 1975.
4. Kent was discharged by Kaiser on June 7, 1975.
5. Kent filed her complaint with the Indiana Civil Rights Commission ("ICRC") on or about August 4, 1975.
6. Kent filed an Amended Complaint with ICRC on or about May 27, 1977. The claims asserted in said Amended Complaint arise out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original complaint.
7. Kent's Complaint was timely filed.

8. Kent's Complaint and Amended Complaint were properly served on Kaiser.
9. Kent was hired on the "D" crew, whose work schedule was 6:00 pm to 6:00 am., Wednesday (every other week), Thursday, Friday, and Saturday.
10. Pursuant to the collective bargaining agreement between Kaiser and Aluminum Workers International Union, AFL-CIO, Local Union No. 190 ("AWIU, Local 190"), all newly hired employees were on a probationary period of two hundred forty (240) hours.
11. Janice DeBruzzi ("DeBruzzi") and Maria Chavez ("Chavez"), both Caucasians (hereinafter "white"), were hired at the Wanatah plant as Stamper Packers and began their employment on or about the same date as Kent.
12. Kent received an evaluation or progress report after eight (8) working days indicating her work performance was "marginal".
13. Neither DeBruzzi nor Chavez was discharged.
14. Kent's performance on her job was more closely monitored than the performance of either DeBruzzi or Chavez. The reason for this disparity is that Kent was black and that Chavez and DeBruzzi are white.
15. The claim made by Kent's amended complaint is that she was discharged by Kaiser because of her race. This claim she has failed to prove.
 - a. Kent has not established that the closer monitoring to which she was subjected was the cause of her discharge.
 - b. In light of the nature and number of problems that Kent had in the performance of her job (e.g., inability to keep up with the speed of the machine inability properly stack lids on the skids, inability to properly sleeve lids in the envelopes), Kaiser would have discovered her difficulties and discharged her even had it not monitored her more closely.
 - c. there is not sufficient evidence that DeBruzzi, Chavez, or any other white had any or all of the problems in performance that Kent had, and were nonetheless retained by Kaiser.
18. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. ICRC ha jurisdiction over the subject matter and the parties.
2. Kent and Kaiser are both “persons” as that term is defined in IC 22-9-1-3(a). Cf. 910 IAC 1-1-1 (A).
3. Kaiser is an “employer”, IC 22-9-1-3(h), (i), 910 IAC 1-1-1(H), (I).
4. A party claiming that an unlawful discriminatory practice based on race was committed against them has the burden of proving that the adverse action complained of was caused by race. *Indiana Bell Telephone Company Incorporated v. Boyd* ____ Ind. App. ____, 421 N.E. 2d 660, 26 FEP Cases 840 (1981).
5. Kent has failed to prove that her discharge was caused by race.
6. If ICRC finds that a person has not committed an unlawful discriminatory practice, it must dismiss the complaint. IC 22-9-1-6 (k) (3).
7. Any Finding of Fact which should have been deemed a Conclusions of Law is hereby adopted as such.

ORDER

1. Kent’s complaint, as amended, should be, and the same hereby is, dismissed.

Dated: June 18, 1982